

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

November 27, 2007

Meeting	Chairman Ron Poff called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m.
Roll Call	Roll call showed the following Board Members present: Ron Poff, Daniel Naas, Stacy Wall and Alan Rodrigues. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
Absences	<p>Mr. Rodrigues moved to excuse Mr. John Borchers, seconded by Mr. Poff. Motion carried. Ayes: Rodrigues, Poff, Wall, and Naas. Nays: None.</p> <p>Citizens attending the meeting: Peter Jackson and Ann Nishwitz.</p>
Board Minutes 10-17-07	Chairman Poff asked for discussion. Mrs. Wall moved to approve the October 17, 2007 minutes as written , seconded by Mr. Poff. Motion carried. Ayes: Wall, Poff, and Rodrigues. Nays: None. Mr. Naas abstained from the vote.
Citizen Comments	There were no citizen comments on items not on the agenda.
Administration of Oath	Mrs. Patterson, notary, swore in citizens wishing to speak and to Mr. Spring.
New Business	Chairman Poff explained the guidelines and procedures for the meeting and public hearings. He advised the applicants that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicants request, the applicant may file the appropriate permits after the 10-day waiting period has expired.
Case No. 13-07: Peter Jackson 60 Kiser Drive Driveway Variance Request	<p>Case No. 13-07: Peter Jackson - 60 Kiser Drive - Inlot: Inlot 1233 - The applicant requested a variance of six (6) feet to Code §154.061(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet. Present Zoning District: R-1C – Urban Residential Zoning District Zoning Code Section(s): §154.061(I)</p> <p>Mr. Spring stated that in conjunction with an expansion of two neighboring driveways, the applicant requested a variance of six (6) feet to Code §154.061(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet. Staff noted that the “proposed” expansion had already been completed.</p> <p><u>Procedural Requirements</u></p> <p>Mr. Spring stated that the Board of Zoning Appeals had jurisdiction in this case to grant the variances per Section §154.175(E)(1), which states:</p> <p>(E) <i>“The Board may grant variances only in the following instances and no others:</i></p> <ol style="list-style-type: none"><i>1. To permit any yard or setback less than a yard or setback required by the applicable regulations.</i> <p>Mr. Spring noted the following procedural requirements must be met regarding</p>

the granting of variances and noted in Section §154.175(C):

"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:

- (1) The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
- (2) The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
- (3) The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or improvements in the vicinity;*
- (4) The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this chapter, or permit a use prohibited expressly or by implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."*

Mr. Spring also noted the requirement of Section §154.175(D), which states:

"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore."

History

Mr. Spring stated that on August 8, 2007, Mr. Jackson appeared in person at the Tipp City Government Center, and discussed the possibility of renovation of the existing driveways, approaches and sidewalk at 60 and 66 Kiser drive. The plans he explained were as follows:

- Replacement of sidewalk at 66 Kiser
- Replacement of existing gravel driveway at 60 Kiser with concrete. This replacement would expand the driveway to meet the existing concrete driveway at 66 Kiser.
- Replacement of the approach at 60 Kiser Drive
- Replacement of the approach at 66 Kiser

Mr. Spring stated that he had explained that replacement of the existing gravel driveway with concrete would require a Zoning Compliance Permit (ZCP). He further stated that a variance would be required for any driveway setback closer than 6'. Mr. Spring also stated that unless the property line fell exactly on the demarcation between the driveway at 60 Kiser and 66 Kiser that variances would be needed for both addresses (60 & 66 Kiser Drive) for the required 6' setback.

Mr. Spring noted that Mr. Jackson had said that the driveway at 60 Kiser would

end at the property line and that only one variance would be needed. Mr. Spring stated that an accurate survey would be needed to accompany the variance application, which would document the proposed plans. Mr. Jackson was given the variance application material and began to fill it out at the Government office. The application was not completed at the time Mr. Jackson left the office.

Mr. Spring stated that on August 13, 2007, the driveway at 60 Kiser was poured, with the contractor on site (Darrel Cress) about to pour the sidewalk at 66 Kiser and begin to remove the approaches. At 1:30 PM, on the same date, a STOP WORK order provided to Mr. Cress, with notification that no work was to proceed until Mr. Jackson had submitted the appropriate forms and his contractor was registered to work in the right-of-way. At 4:00 PM, on that same date, Mr. Cress submitted appropriate paperwork to complete concrete work in the right-of-way, and the STOP Work order was lifted.

Mr. Spring stated that on August 23, 2007, a correspondence was sent via regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than September 4, 2007. The correspondence was mailed to 115 Kiser Drive, Tipp City, Ohio 45371, which is the mailing address listed by the Tipp City Electrical Department for this property. As of September 5, 2007, Mr. Jackson had not submitted the required variance paperwork, as requested.

Mr. Spring stated that on September 10, 2007, the correspondence dated August 23, 2007 was returned to City as "return to sender, not deliverable as addressed, unable to forward." That same date, a second correspondence was sent regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than October 1, 2007. This correspondence was mailed to 59 Kiser Drive, Tipp City, Ohio 45371, which was the known address of Ann Nishwitz (friend), and Mr. Jackson's assumed current address of residence. On October 1, 2007, Mr. Jackson had not submitted the required variance paperwork, as requested.

Mr. Spring stated that on October 2, 2007, he held a discussion with a representative at the Tipp City branch of the United States Post Office. After discussion with the route carrier, the representative indicated to him that Mr. Jackson no longer resided at 115 Kiser Drive, but that the carrier knew that Mr. Jackson was residing at 59 Kiser Drive, and that mail addressed to 115 Kiser was usually delivered to 59 Kiser Drive. The carrier could not explain how the correspondence dated August 23, 2007 was returned as "return to sender, not deliverable as addressed, unable to forward." The carrier did indicate that a second correspondence addressed to 115 Kiser Drive, would be delivered to Mr. Jackson at 59 Kiser Drive.

Accordingly, a third correspondence dated October 2, 2007 was sent via regular mail to Mr. Jackson notifying him of the violation of Code §154.061(I), with a requirement to apply for a variance to said Code no later than November 5, 2007. The correspondence was mailed to 115 Kiser Drive, Tipp City, Ohio 45371, per the discussion with the Tipp City Post Office. On November 2, 2007, Mr. Jackson filed the BZA application under discussion this evening.

Mr. Spring noted that in order to provide for appropriate review, staff requested

(in each of the three (3) correspondences) that Mr. Jackson provide (along with the application for variance) a site plan indicating the "as-built" condition of the driveway renovation, and the exact location of all property pins on the lot. Staff noted that the Mr. Jackson provided a rudimentary site plan, without a clear delineation of the verified property line on the site plan or the actual site (stakes, flags, pins, etc.).

Mr. Spring requested that if the Board approved the required variance for 60 Kiser Drive, that the approved variance include the following conditions:

1. That the applicant must produce a site plan indicating the "as-built" condition of the driveway renovation, and the exact location of all property pins on the lot by December 31, 2007.
2. Based upon the submission of the "as-built" site plan, a second variance application for 66 Kiser Drive must be submitted no later than January 31, 2008, if it is found that the driveway expansion encroaches onto the property of 66 Kiser Drive for a to variance to Code §154.061(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six (6) feet.

Chairman Poff inquired if any neighbor's comments had been received. Mrs. Patterson stated that one comment was received on Tuesday, November 20, 2007, a comment was received a call from Marilyn McConnahay – 54 Kiser Drive. She stated that she did not see a problem with the drive but would consider attending the meeting on the 28th of November.

Mr. Jackson approached the podium and stated that the property at 115 Kiser Drive was his and that he did receive mail there. Mr. Jackson stated that he had asked the post office to forward the mail to 59 Kiser Drive.

Chairman Poff asked Mr. Jackson how long he had lived in Tipp City. Mr. Jackson stated that he moved to Tipp City in 1991. Chairman Poff asked Mr. Jackson if he remembered seeing any pamphlets in his utility bills that resembled the ones that he was holding in his hands. Mr. Jackson stated yes. Chairman Poff stated that the pamphlets had the information in them that he needed in order to do any work or improvements on the property; such as necessary permits and guidelines for safety and to protect neighbors. Chairman Poff stated that it was a good idea to have the City involved when doing any projects and that if he were to do anything further to his properties to get with the City first.

Chairman Poff asked Mr. Jackson if he had the survey completed. Mr. Jackson stated no, he did not have the ability to get a survey done, as the existing pins; he wasn't able to find them except the one that was involved.

Chairman Poff asked Mr. Jackson if he lived at 60 Kiser Drive. Mr. Jackson stated that he did not and that he lived at 59 Kiser Drive and owns the properties at 115 Kiser Drive and 60 Kiser Drive. Chairman Poff inquired who owned the property at 66 Kiser Drive. Mr. Jackson stated that Nurrenbrock's owned 66 Kiser Drive. Chairman Poff asked if Mr. Jackson was good friends with the Nurrenbrock's. Mr. Jackson stated that he was. Chairman Poff asked what would happen if the Nurrenbrock's sold their house and the new owners found out that the driveway was on their property. Mr. Jackson said that it becomes partially their driveway and they would assume the drive that was on their property. Chairman Poff mentioned that there was a potential legal issue

due to the fact that a professional survey had not been completed. Chairman Poff asked Mr. Jackson if a professional survey was to be brought to this meeting and then the other one was to be done by January 31st. Mr. Jackson said that he thought that it said December 31st.

Mr. Rodrigues said to Mr. Jackson that it appeared that he was asked to provide the survey before in one of the previous letters that he received. Mr. Jackson stated yes. Mr. Rodrigues asked what the reason was for not providing it. Mr. Jackson said that he wasn't able to get it. Mr. Rodrigues asked Mr. Jackson If he called someone to schedule it and he couldn't get them to come out to the house. Mr. Jackson said no, and that he wasn't able to get it into his plan, and no that he did not contact anyone directly. Mr. Rodrigues stated that Mr. Jackson just didn't do it. Mr. Jackson said that was right.

Mr. Jackson said that he was unclear on how the approaches got involved because when he originally came to Mr. Spring and proposed that he simply wanted to replace the existing driveway that was gravel with no reference to approaches because he didn't intend to do the approaches nor the good sidewalk, so he didn't bring that up and that he didn't know where that came from. Mr. Spring stated that any type of work in the right-of-way was essentially the jurisdiction of the City's Engineering Department and there was a requirement in the Tipp City Code that any contractor that does work in the right-of-way, which would be the sidewalk and the approach has to be a registered contractor with the City so that it could be verified worker's comp coverage and essentially their validity as a contractor. Mr. Spring stated that Mr. Cress was not a registered contractor in the City of Tipp City. Mr. Jackson asked if Mr. Cress ever registered. Mr. Spring stated that after the stop work order was placed he came to the City building and filled out the appropriate paperwork and pulled the appropriate right-of-way working permits that afternoon. Mr. Jackson stated that his point was that the only place that he discussed with Mr. Spring was the replacement of the gravel driveway and didn't know how the approaches got involved and that Mr. Cress brought that up to him. Mr. Spring stated that there was not a specific issue with the approach regarding this variance, it was simply part of the overall picture that he painted for the Board Members this evening because when it was noticed that the work was being done, the only thing left to be done at that point was the approaches and the sidewalk. Mr. Spring said that was where the work had to be stopped in order to get some semblance of order and permissibility of what was going on. Chairman Poff added that all the work required a permit also, so if Mr. Jackson would have got the permit everything would have been covered. Chairman Poff also added that way the City could have inspected the work that the contractor was doing to make sure it was done the way the City wanted it done.

Chairman Poff noted that if that contractor would have done something wrong and down the road the approach breaks or Mr. Jackson would have a problem on his hands. In other words, if the City was involved they could make sure things were going in the right way.

Chairman Poff asked Mr. Jackson why he didn't want to get the City involved when he wanted to do his project. Mr. Jackson stated that was why he came over on the eighth was to get involved with the City and to explain what he wanted to do on that driveway. Chairman Poff stated as far as paperwork goes, why wasn't the paperwork taken care of. Mr. Jackson stated that he just

didn't get it, with his schedule he just couldn't get it done.

Chairman Poff asked regarding the schedule for the surveyor, if Mr. Jackson was able to get the survey done as the time required on the variance. Mr. Jackson stated that he was not sure at this time and he would have to contact someone and see what their schedule is and if at all possible he would get that done. Chairman Poff asked Mr. Jackson if he was not sure or if he was definitely going to make sure it was done. Mr. Jackson stated that he can't govern someone else's schedule but he could certainly approach things to see about availability. Chairman Poff noted that there were several surveyors out there in Tipp, Vandalia, and Troy, but Mr. Jackson was putting the Board in a problem here as far as the Board has to go on Mr. Jackson's good faith that he was going to have it done and if Mr. Jackson wanted the Board to work with him, he needed to work with them. Mr. Jackson stated that he understood.

Mr. Rodrigues asked Mr. Spring about the photograph provided to the Board. Did Staff know if the driveway on 60 Kiser Drive was half the property line itself? Mr. Spring stated that Staff did not know the accurate depiction of that. Mr. Spring stated that his guess would be somewhere between the two garages of the properties, but the driveway at 60 Kiser clearly abuts the driveway at 66 Kiser Drive. Mr. Rodrigues stated that the photograph looked new. Mr. Spring stated that the photograph was new, but had the photos from when the work was in progress the day the stop work order was placed. Mr. Spring stated that unless the property line falls exactly at the point where the old driveway and the new driveway meet, then there would be a variance required for 66 Kiser Drive as well since it too was an addition to a driveway. Mr. Rodrigues stated that if the Board would assume that the property line may line between the two garages, the drive would in fact be on the other property. Mr. Spring stated that was correct. Mr. Spring also stated that he was not willing to assume that but just common sense says that it absolutely has to be investigated and the only way to know that for sure is to have an appropriate survey submitted by a certified professional surveyor or engineer that would certify that exact location of the driveway on the properties.

Mr. Rodrigues said to Mr. Jackson that he was a little confused with the regard to the permitting process. Mr. Rodrigues noted that Mr. Jackson recognizing the he needed to file a permit, having come down to the City building to fill out the paperwork to do so. Mr. Rodrigues asked Mr. Jackson why he wouldn't he had followed through to get that done prior to starting the construction? Mr. Jackson stated that he could not answer that.

Mrs. Wall stated that her question was Mr. Jackson was replacing gravel, where was the gravel? Was it right next to that driveway or was there grass in between? Mr. Jackson stated there was grass in part of it the other was dirt. Mrs. Wall said then the gravel did not abutt the other driveway. Mr. Jackson stated the gravel did not abutt the other driveway and that was his intent originally was to replace the gravel only.

Mr. Jackson stated that a situation happened upon 66 Kiser Drive which governs this. The wife, Mrs. Nurrenbrock had a handicap so it was very difficult for her to get in and out of the driveway so that she can get her vehicle off of the car and so forth and that was part of the reason of abutting the two driveways so that would eliminate that problem. Mr. Jackson stated that the second thing had to do with when that house was built as you can see from

the picture there was an offset between the garage and the house and so it makes it very difficult to back out of the driveway. Mr. Jackson said there was also a pole along the street with a street light on it and that was also a hazard. Mr. Jackson also said that he tried to stay with an eight foot driveway which is what is in there which would not have met the code.

Chairman Poff said more or less what he has heard Mr. Jackson say about the neighbor; Mrs. Nurrenbrock was that he was trying to help her out because she was handicapped. Mr. Jackson stated exactly because what happens when they would enter their driveway they would come across that grassy area anyway. Mr. Jackson continued to say that with her handicap that made it more severe, then when she got the cart, trying to utilize the cart getting in and out. Mr. Jackson said that was the reason for taking that area which was pretty much a waste area and concreting it. Mr. Jackson noted that one of the things that he did a little research on was the common driveways were really pretty common in that area. Mr. Jackson also noted that there were five on that street, some of which were paved, some of which were black top, some of which were gravel and combination. So he was not asking for anything that was unusual and he also drove around and found that there were other places on other streets like Miles and Main Street and so forth that have common driveways and that's the whole overall objective to try and get a common driveway and not only approved the appearance of both properties but it also includes the functionality for both parties concerned. Mr. Jackson stated that he appreciated Chairman Poff's point about if someone would buy the property then it would become a problem. Chairman Poff stated that the other problem was that if Mr. Jackson would have had the City involved from the beginning that would have helped out a lot because then he would have found out some more. Chairman Poff also stated that he had a problem with being able to grant that because we do not know where the pins are at and no survey plot.

Mr. Naas wanted to make sure that Mr. Jackson understood that this Board couldn't possibly grant permission for him to put the driveway on someone else's property and that was an issue here. Mr. Jackson said that his point was that he was not putting the driveway; the driveway was not for the benefit of 60 Kiser not for his benefit; It was to make it more accessible for 66 Kiser. Because she was the one who had the problem. Mr. Naas said that he understood that and he could appreciate that, but from a legal standpoint there could be problems. Mr. Naas continued to explain to Mr. Jackson that if someone bought the property at 66 Kiser or Mr. Jackson's property and they found that the driveway that they think they might have is in fact not their driveway, but the next door neighbor's. Mr. Naas said that the Board had seen this issue several times just in the short time that he had been a Board Member problems arise like that years later that these things crop up, and he wanted to make sure that Mr. Jackson understood what the serious nature of the problem that the Board had with that.

Mrs. Wall stated that as far as options Mr. Jackson could get an easement drawn up and legally file recorded to take care of this kind of issue but at this point Mr. Jackson couldn't even do that without a survey. Mrs. Wall also stated that there are issues where if there are problems with the pipes under the sidewalk or in the road and it's torn up the homeowner is required to go ahead and repair after its been tore up by the utility company and in this particular case there very well could be an argument on who had to pay to replace it

because of the location of the driveway and who's property it really is. Mrs. Wall noted that Mr. Jackson paid to have it installed but it's on someone else's property. Mrs. Wall stated that would not be an issue that she would want to be involved with. Mr. Jackson stated that since the contractor worked for both of us he was not saying that he wanted to assume responsibility as part of the driveway at 60 Kiser because it is for the benefit of 66 Kiser and his benefit would be that it eliminates an area that has been a hazard due to weather and so forth, that was his benefit. Chairman Poff stated that Mr. Jackson was responsible for the drive because he put it down. Mr. Jackson stated that the contractor worked for both of them so he was not trying to shed any responsibility, he was trying to work his way through the situation.

Mr. Naas stated that just looking at the picture it looked as though Mr. Jackson would find that when a survey was done that the driveway was on part of the other property, he didn't know that either but it just appears to him that way and he would prepare for that eventuality in some respect.

Chairman Poff asked Mr. Jackson if he could have both surveys done before the year was out. Mr. Jackson stated that he would make every effort to do that. Mr. Jackson asked when Chairman Poff said both surveys if he was saying the one at 60 Kiser where the pins were. Chairman Poff said yes the survey for both lots. Chairman Poff said that if he was going to do 60 Kiser that he was going to do 66 Kiser. Mr. Spring stated that essentially that if Mr. Jackson had that one property line that would define both property lines for both properties so that would really be sufficient for both variances.

Chairman Poff asked Mr. Spring that per the staff report that based upon a submission of the "as-built" site plan, a second variance application would be needed for 66 Kiser. Mr. Spring stated that was correct and in other words once the true and accurate property line was established, even though it looks like it was all poured as the driveway on the right, really there would be a chunk of driveway that really belongs to the driveway on the left. Mr. Spring also stated that it would be a kind of older driveway with a chunk of new and really it was a civil issue between the two neighbors as to who cares for and who owns that but ultimately the property line would be clearly delineated in this proceeding based on the motion and the subsequent submission of the survey. Mr. Spring noted that the property at the left (66 Kiser) would have to get an identical variance granted in order for them to maintain that same legality that both driveways would essentially abutt the property line regardless of where the demarcation of old and new cement eventually comes out to be. Chairman Poff stated that 66 Kiser could be two foot over onto 60 Kiser. Mr. Spring said yes, that poured new driveway certainly could be and it was his opinion that it probably was, but regardless of that wherever that demarcation was if its two feet, that two feet really was one hundred percent 66 Kiser's driveway. Mr. Spring noted that both property owners if the pin was somehow marked in paint or some other more permanent method so that it would be clear for them and any other subsequent owners. Mr. Jackson stated that there was a pin in the sidewalk. Chairman Poff asked Mr. Jackson if it was between the two properties. Mr. Jackson stated yes. Chairman Poff asked Mr. Jackson if he knew where the pin was in the backyard. Mr. Jackson stated that he looked for the other three pins and was not able to find those. Mr. Spring stated that we would need at least those two pins to pull the string appropriately. Mr. Spring added that a survey would show exactly where the driveway including all of its length and width lies on the entirety of both

properties.

Mr. Jackson asked about the driveway as originally planned would not meet the six foot requirement either. Mr. Spring stated that was correct and that would be considered as a non-conformity which means that it exists in opposition of the code but it existed prior to the code so it was allowed to continue in perpetuity as long as there was no changes to it. Mr. Spring also stated that when Mr. Jackson proposed the concrete or cement improvement to it as well as an expansion that essentially removes the non-conformity status and forces that driveway to come into our current code. Mr. Spring added that was exactly why the variances would be needed and that was what was explained back in August to Mr. Jackson. Mr. Spring said that yes you could do it but you must seek variances for at least the one property and if the appropriate survey showed that driveway fell on anyway the other side of the property line then a variance would be needed for both.

Mr. Naas stated that he certainly understood the conditional variance, should the Board decide to do that, but he was not so certain that as a Board that they could require Mr. Jackson to apply for a variance for a piece of property that he doesn't own. Mr. Spring stated that was correct, the Nurrenbrock's and Mr. Jackson were fairly friendly and when he was out there that day the stop work order was placed Mr. Jackson was not there but Mr. Nurrenbrock was. Mr. Spring stated that he spoke with Mr. Nurrenbrock at length regarding the situation. Mr. Spring also stated that he spoke with Mr. Jackson on the eighth regarding the exact same theoretic probability that two variances would be needed. Mr. Spring said that ultimately it was Mr. Nurrenbrock's responsibility and he would be the one who would have to receive correspondence from the City regarding it. Mr. Spring also said that it was probably in the best interest of Mr. Jackson to at least cooperatively to work with Mr. Nurrenbrock to seek that sense really this entire project was birthed by his notion.

Mr. Spring added that if the Board felt that the second condition could not be met by Mr. Jackson he certainly understood that it would essentially become an administrative enforcement function that he would have to pursue separately and either way it was fine with him. Mr. Spring stated that he wanted to stress more than anything with the conditions was that just granting a variance this evening left several open strings that would need to be tied up, because at this point granting a variance to Mr. Jackson would certainly cover the property at 60 Kiser Drive, but we don't know what is really up with 66 Kiser. Mr. Spring noted that assumptions could be made but that was not a good idea when it comes to variances and that we needed to know down to inches where the driveway falls. Chairman Poff stated that we needed both home owners involved in it. Mr. Spring said yes and it could be done separately, but both variances would be needed if the property line falls where it was believed it did. Mr. Jackson asked if one survey would take care of both of them. Mr. Spring stated that essentially as long as that survey documented the position of the driveways and the exact position of the property line. Mr. Jackson agreed. Mr. Spring stated that in the future it would behoove both property owners to show exactly where the property line was in relation to the angle of when the driveway actually begins to fade back where that demarcation was so that issues like maintenance, snow removal etc as well as any type of liability from slipping or falling was clear as to who's property it was.

Chairman Poff asked Mr. Jackson if he had any further questions for the Board.

Mr. Jackson said no, and that he would go ahead and see as quickly as possible getting it contracted for the survey. Chairman Poff stated that we needed to have that, for his own good and for everyone else's own good to have it.

Mr. Naas asked Mr. Spring what the difference would be between moving a conditional variance as opposed to tabling it until a given specified date when Mr. Jackson had obtained a survey so that he would know how the whole thing was going to play out. Was there a difference there, or a time constraint. Mr. Spring stated that there was no time constraint and essentially the case had been dragging on in his mind since August and that he had a very difficult time getting Mr. Jackson to this Board as they could see with a series of three letters, all three of which should have gone to an address that Mr. Jackson received mail at. Mr. Spring also stated that from a practical standpoint, obviously the driveway was already in and it's not going anywhere and certainly tabling the case until a survey was promulgated was an option and would be fine with him if Mr. Naas was asking for his opinion. Mr. Spring added that in either case a variance would be necessary and if one was not granted than an enforcement action on the City's part would have to take place if the case was table then all enforcement action is stayed until that point in time when the variance was decided.

Mr. Rodrigues asked Mr. Spring that if the Board did decide to table the case, would it not be the proper thing to not only get the survey but to have two variances submitted, one for the property at 60 and one for the property at 66 at that point in time which in that case would take care of it all. Mr. Spring stated that would certainly be the best or most ideal, but one problem was that simply logistics. A variance request has to be in by the third of December in order for it to be a legitimate December variance request. If the Board was willing for a sixty day period to go by than certainly we could see both candidates in January because Mr. Spring wasn't sure if Mr. Jackson could promulgate a survey and turn it in along with the application and application material for the 66 Kiser Drive property in time for next month's meeting, but two months out would certainly be more doable. Mrs. Wall stated that she would not be in favor of the tabling because as had been stated that Nurrenbrock's had been involved in this from the beginning and they were not even here tonight. Mrs. Wall said that to get them to bring in an application who knows what effort that would take. Mrs. Wall noted that if the Board tabled it out sixty days we would have the argument that the survey couldn't be done because we had bad weather, she just thought that gave too much of an extension and she would be opposed of tabling. Mr. Jackson asked to make a comment. Mr. Jackson stated that he had taken the initiative with the Nurrenbrocks to get this done and that's exactly why he was involved because they do respond very slowly and he assumes the responsibility based on what was discussed here of getting their signature on the surveys and getting it back and turned in. Mr. Jackson continued to say that the responsibility still remained with him regardless unless they were just going to turn him down and then at that point in time it opens up a new issue, but responsibility still back to him to get it done. Mrs. Wall stated that she understood that Mr. Jackson had accepted responsibility for being him, but the responsibility was not all his. Mrs. Wall also stated that she would bet that property line was on that driveway, so it was both parties responsibility and if they jointly had the contractor working for you it was not all Mr. Jackson's responsibility and they should be here tonight. Mrs. Wall noted that the Nurrenbrocks were not required to be present,

but her opinion was that they should be there because it affects them just as much as it affects Mr. Jackson. Mr. Spring stated that the reason at this point that the Nurrenbrocks were not required was because at the initial discussion on August eighth Mr. Jackson essentially made a clear statement that the property line falls where the driveway ends. Mr. Spring said that he did not have a survey to contradict that statement. Mr. Spring also said that even though it was pretty obvious to him, he had no facts at all to back up his assumptions. Mr. Spring noted that his hope was that we could get Mr. Jackson and the survey pushed to a point to actually happen and that way Staff could essentially prove that the Nurrenbrocks also were going to be required to get a variance.

Chairman Poff noted that if the Board went on a sixty day extension on the case, he was almost positive that a survey could be done within that time period. Chairman Poff also noted that Mr. Jackson would have to do his part and come back to the Board as well as the Nurrenbrock's. Mr. Spring stated that would be a second variance application, a second seventy-five dollar application fee and then also all of the requirements of an application which would include all the surrounding property owners' names addresses and so forth. Mr. Rodrigues stated that was the same thing if the application was denied. Mr. Spring stated that was correct. Chairman Poff stated that once the case was denied Mr. Jackson still had to do it all over again. Mr. Spring said that was correct. Mr. Spring mentioned that the Nurrenbrocks would still be out there in no man's land until we had some kind of survey; staff did not know in anyway where that demarcation line falls and if in fact the Nurrenbrocks were required to get a variance. Chairman Poff asked if the Board could wave Mr. Jackson's extra fee for the next application and does the Nurrenbrock's have to pay for theirs. Mr. Spring stated that Mr. Jackson's application would stand as it was. Mrs. Patterson noted that in order for Mr. Jackson to go out sixty days, he would have to have the survey done fifteen days prior to the January meeting so whatever that day was the survey would need to be turned in. Mr. Spring noted that was right and essentially the survey would have to be turned in by December 31, 2007, or whatever the absolute cutoff date was for the January meeting, so that's why it was as close to that and December 31, 2007 was a nice round date. Chairman Poff noted that kind of posed as a problem to get everything in within the sixty days. Mrs. Patterson stated that we say sixty days but really it was more like 33 days due to the filing deadline.

Mr. Naas asked what if the Board would conditionally grant a variance and on December 31, 2007 Mr. Jackson did not have a survey. Mr. Spring stated that it fell back to an administrative enforcement issue and it wouldn't be the Board's position to draw that from an applicant it would just be an enforcement issue. Mr. Naas said then Mr. Jackson would still have his variance, he just would not have complied with it. Mrs. Wall stated that it would be her opinion that the variance would no longer be granted if it was a conditional variance and the condition was not satisfied that variance does not stand. Mr. Naas stated that was what he was getting at. Mr. Spring noted that he would take Mrs. Wall's opinion as the truth.

Chairman Poff asked if there were any further questions for Mr. Jackson. There was none.

Chairman Poff asked for further discussion. There being none the Board acted as follows: Mr. Rodrigues **moved to deny a variance of six (6) feet to Code**

§154.06(I) to allow a residential access drive zero (0) feet from the side property line rather than the required six feet (6) feet, seconded by Mrs. Wall. **Motion carried.** Ayes: Rodrigues, Wall, Naas, and Poff. Nays: None.

Chairman Poff stated to Mr. Jackson that the motion had been denied and reminded him that he had a ten day waiting period to file his appeal with City Council. Chairman Poff also stated that Mr. Jackson would have to get the survey done and turned back in to Mr. Spring to get everything taken care of. Mr. Spring told Mr. Jackson that he had the option of appealing the Board's decision to City Council and if he did not appeal the variance denial within the next ten days the City would take enforcement action to force the removal of the driveway. Mr. Spring noted that essentially an appeal was his only option at this point and that Mr. Jackson would have to put something in writing to staff within the next ten days and that would have to come to our office within ten days appealing this decision and then he would go before our City Council in about a month or so. Mr. Jackson asked wasn't that everything we were trying to do though. Mr. Spring said there was nothing that he would have to do at this point. Mr. Spring noted that he might want to get a survey together as quickly as possible as some sort of additional help for his case but City Council would actually be just reviewing the minutes that had taken place this evening and that's all at this point. Chairman Poff added that City Council had the right of overrule the Board's decision or they could withhold the decision however they feel to do it and they will let him know at that time.

Mrs. Wall wanted to add to the record that she thinks that there were multiple reasons for the denial but specifically she believed that Code Section §154.175 (C)(3) was violated and that the Board could not grant a variance because it would be injurious to other property or improvements. Mrs. Wall said that she certainly understood the intent of what the applicant was trying to do and that she admired the good neighbor, but there were legal issues and those issues were completely outstanding without the survey. Mrs. Wall noted that it was not guaranteed how long they would be neighbors or that they would be neighbors forever and any new property owner coming in there would have a problem and so she thought that subsection (3) was violated if the Board would try and grant a variance.

Mr. Jackson asked that if the improvement becomes the property at 66 Kiser why would it be a problem. Chairman Poff said as stated earlier if that improvement went onto their property we don't know exactly where the property line was at so we don't know how much the improvement was on their property, and we don't know how much improvement was on his property. Chairman Poff noted that the code states that the driveway had to be six feet away from the property line of the driveway that was both neighbors. Mr. Jackson said which was not true in either case at the present time or before. Chairman Poff stated that before when that subdivision was built there were probably some other requirements was happening with the driveways or whatever Mr. Spring stated earlier in the case, that's where we are at. Chairman Poff said Mr. Jackson was looking to put improvement on someone else's property and we need to know if it is on your property, we need to know. Mr. Jackson said he had no problem getting the survey and going ahead with that part he was just concerned with the time and the steps he had to take to get it done. Chairman Poff stated that as Mr. Spring stated earlier this had been going on since August so he needed to get it done pretty quick so it doesn't go into the legal standpoint so that was what he needed to

do.

Old Business

There was none.

Miscellaneous

Chairman Poff said that a possibility of hearing another case. Mr. Spring stated that was essentially on hold until further notice.

Adjournment

There being no further business, Mr. Rodrigues **moved to adjourn the meeting**, seconded by Chairman Poff and unanimously approved. **Motion carried.** Chairman Poff declared the meeting adjourned at 8:20 p.m.

Ron Poff, Chairman

Attest: _____
Kimberly Patterson, Board Secretary